SUPPLEMENT TO

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Abstract Proceedings of the Mysore Legislative Council.

The Council met in the Council Chamber, Public Offices, at 3 P.M. on Wednesday, the 28th August 1907.

PRESENT.

V. P. MADHAVA RAO, ESQ., C.I.E., Dewan (Presiding).

Ex-officio Members.

T. ANANDA RAO, ESQ., B.A., (First Councillor).
K. P. PUTTANNA CHETTY, ESQ., (Second Councillor).

Additional Members.

Official.

A. RANGASWAMI IYENGAR, ESQ., B.A., B.L.
H. J. BHABHA, ESQ., M.A.
RAO BAHADUR M. MUTHANNA, ESQ.
M. KANTHARAJ URS, ESQ., B.A.
S. NARAYANA RAO, ESQ.

Non-official.

V. N. NARASIMMIYENGAR, ESQ.
M. C. RANGIENGAR, ESQ., B.A.
B. NAGAPPA, ESQ., (Bar.-at-law).
SYED AMIR HASSAN, ESQ.

ABSENT.

Non-official.

RAJAMANTRA PRAVINA C. SREENIVASIENGAR, ESQ.

K. MYLAR RAO, ESQ., B.A., B.L. (Secretary).

DEWAN :—

Mr. C. Sreenivasaiengar has sent a letter regretting his inability to attend this meeting. He states that he generally approves of the principles of the bills, but that he has got certain amendments to propose, which he will do in due course.

The Secretary reported for the orders of the Council the representations received from Mr. Hema Hanumanthaiya, retired Assistant Commissioner, Mr. S. R. Balakrishna Rao, Advocate, Patel Subbaroyappa and Lakshminarasimhachar. The first two were reserved for consideration, and the other two were filed as they did not relate to any matter actually under the consideration of the Council.

Mr. Narasimmaiengar presented a petition received by him from certain raiyats of the Devanhalli Taluk and observed that it was a protest against the Village Offices Bill.

Bill to amend the Stamp Regulation, II of 1900.

MR. A. RANGASWAMI IYENGAR :—

SIR,

I rise to move for permission to introduce a bill further to amend the Regulation No. II of 1900, relating to Stamps. That Regulation itself was passed on the lines of the Indian Stamp Act of 1899 in amendment of the previous Act I of 1879 which was in force in the Province. Since then the Indian Stamp Act of 1899 has been modified considerably by Acts VI of 1900, XI of 1904 and V of 1906. In the amendment Regulation now proposed are embodied all the changes introduced by these three amendment acts.

These changes have been arranged in ten clauses. Of these that which deserves to be mentioned first is clause No. 7 relating to the alteration of clause (1) (*b*) of Section 40 of Regulation II of 1900. This latter clause gives no discretion to the Deputy Commissioner to levy a penalty of less than ten times the amount of the proper stamp duty or of the difference between it and the stamp affixed on the instrument, where such amount is in excess of Rs. 5, even when he considers that it would be a hardship to enforce the full penalty. The hardship caused by this was brought to notice at the last meeting of the Representative Assembly. It is proposed to remedy this by inserting the words "an amount not exceeding" before the words "ten times the amount" in the said sub-section. This amendment has already been made by Act IV of 1904 in the Indian Stamp Act 1899.

The next in order of importance is clause 4 proposing a modification of the first proviso in Section 26 of the Regulation II of 1900. Under the existing proviso, the tendency is to levy stamp duty on Mining leases granted by Government where the value of the share or royalty is indeterminate, on an assumed valuation of Rs. 20,000 a year. This is considered unsuitable and hard in the case of small and unproductive mines. It is proposed to remedy this by providing that where a Mining lease is granted by the Government, the stamp duty leviable thereon will be according to the estimate, to be made by the Deputy Commissioner, of the amount of royalty payable. Clause 9 provides for the revision of the Deputy Commissioner's decision in such cases by the Chief Controlling Revenue Authority.

Another modification of some importance is made by clauses 1 (*a*) and (3). The former clause defines the expression "Marketable security." This definition is necessary in connection with the new Section 23*A* proposed in clause 3 providing for the levy of a fixed fee of 8 annas only instead of the fees prescribed in article 6 of Schedule I, when the security deposited by way of equitable mortgage is marketable.

Clause 10 (1) is also of some importance. There appears to be some doubt as to whether pawns and pledges come under article 6 of Schedule I. Other defects and anomalies noticed in the same connection are—

(*a*) want of provision therein for the case where an equitable mortgage is executed to secure the repayment of a loan after more than one year;

or (*b*) for the case where the advance secured is repayable on demand.

It is proposed in clause 10 (1) to omit the term "equitable mortgage" and amplify the article so as to define more clearly the nature of the transaction intended to be covered. Pawns and pledges are specifically mentioned and the reference to 'hypothecation' has been omitted; thus all transactions of the nature of hypothecation, *i.e.*, where movable property is simply appropriated by way of security for the discharge of a debt or engagement without parting with its possession are outside the scope of the article. It is proposed to impose the same duty on a document securing repayment after more than one year as that on a document securing repayment within one year; and documents securing repayments on demand are to be liable to the same duty as that on documents securing repayments after more than three months.

[*Mr. A. Rangaswami Iyengar; Mr. T. Ananda Rao.*]

Finally it is proposed to place all documents, whether their execution is or is not simultaneous with the advances secured by them, on the same footing.

Clauses 5 (*b*), 6 & 10 (7) relate to the duty on fire and marine insurance policies and have been introduced, though not likely to be required for use in the State, in order to bring the provisions of our Stamp law in line with those of the British Indian Act.

The following clauses also propose minor changes of some practical use :—

Clause 1 (*c*).—It suggests an addition to the definition of 'Settlement' with the object of preventing the evasion of stamp duty imposed on settlements which it is now possible to effect by the simple expedient of first making an oral disposition of the property to be settled and then recording the terms of the disposition in a declaration of trust in which the Settler and the Trustees join. Such an instrument is only chargeable with a stamp duty of Rs. 15 under Article 62 instead of with the heavier duty imposed by Article 56. The proposed addition to the definition will have the effect of requiring such instruments in future to be stamped as Settlements.

Clause 10 (5).—Stamp duties on certain mortgages of crops are reduced from four annas to two annas.

Clause 8.—Admits private banking firms to the benefit allowed by Section 51 of the Regulation in regard to the refund of the value of unused stamp papers.

It is unnecessary to refer to the remaining clauses as they are either unimportant or have been framed to carry out the amendments and alterations necessitated in the Act and the first Schedule by the amendments referrred to in the preceding paras.

MR. S. NARAYANA RAO seconded the motion, and it was put to the Council and carried.

The Village Offices Bill.

MR. T. ANANDA RAO :—

SIR,

Under Rule 33 of the Rules for the conduct of business, I beg to move that the bill to consolidate and amend the law relating to Village Offices in Mysore be read in Council. The bill has been printed and published in the *Mysore Gazette*, and copies have been furnished to the Members of this Council. The bill is accompanied by a Statement of Objects and Reasons. By a study of them, I have no doubt that Members have realized to themselves what I stated the other day in regard to the principles and scope of the proposed measure. It does not appear that notices of any amendments have been given. But it is not to be inferred from this that the bill is beyond criticism and incapable of improvement. Probably, proposals in this behalf have been reserved for the Committee stage of the bill. And speaking for myself I can say that this is the case. For example, on an examination of clauses 5, 6, and 7 of the bill, it will be found that the principal Village Officers, Patel, Shanbhog, Nirganti, Toti and Talari in alienated villages are, in respect of qualifications for office and discipline in office, placed on a somewhat different footing to that of their brother officers in Sirkar villages, the difference being, in my opinion, to the prejudice or in disparagement of the proprietors of alienated villages. Seeing how badly village accounts are kept, how badly also revenue is collected and accounted for to the raiyat and to the proprietor in an alienated village, I would like to see these proprietors possess facilities for better control over their village servants than is given in the bill. I reserve proposals in this behalf for the Committee stage. For another example, the representation from Mr. Hema Hanumanthaiya, retired Assistant Commissioner, which has been just presented to Council, is an interesting document making some suggestions worthy of being examined by a Select Committee on this bill. I may here refer to what he says regarding the necessity for registering the sonless widow in some cases as the holder of an office, and allowing her to appoint a substitute with reservation to herself of one-quarter of the salary of the office. It may be that the deceased husband obtained the office in the course of a partition of family property in which the office was reckoned as an asset; and in that case, it would indeed be a hardship to her to be deprived altogether of the emoluments of the office, and thereby perhaps the means of livelihood, upon the death of her husband without a son to take his place. It will be for the Select Committee first, and for this Council next, to consider how her requirements can be reconciled with those of the public service. Under such circumstances, I move that the bill may be read in Council, and that the Council may be pleased to appoint a Select Committee under Rule 33, clause 2, to consider and report on the bill.

[*Mr. Rangiengar; Mr. A. Rangaswami Iyengar; Mr. T. Ananda Rao; Dewan; Mr. K. P. Puttanna Chetty.*]

MR. RANGIENGAR:—

I heartily second the motion just now made by the First Councillor. The principles of the bill seem to have been discussed almost thread-bare by high officers of Government. There may be little to add to what has already been urged on behalf of the amendment of the bill; but owing to various reasons, as pointed out by the mover himself, the bill should go before a Select Committee and discussed in detail section by section. I submit that the bill may be referred to a Select Committee.

MR. A. RANGASWAMI IYENGAR:—

With your permission I will make one or two remarks on this occasion. There are a number of amendments which I shall reserve for the Select Committee stage. But on one principle I wish to dwell before the bill is referred to the Select Committee. The provisions of the bill are calculated to impair the hereditary nature of the appointments. I think the Council will do well to examine that point before referring it to the Committee as it stands, or if the Council will express their opinion on that point, it will enable the Select Committee to modify the provisions in conformity with that view, in their discussions. The appointments have been held to be hereditary for a long time, and the remuneration paid to these officials is so small that but for their hereditary character, it would have been impossible for the Government to have secured their services for so long. And this is important for another reason. If we want to promote the corporate nature of the village community and give certain powers of management to them, the Village Officers will be a very important element of that corporate body, and unless steps are taken to make the offices continue in the same family, it is not likely that the officials holding these appointments will command the necessary influence. It is very good to have educational and other qualifications, but these will not at all supply what is most wanted in these offices and that is, the influence which the hereditary character of the office and long residence in a village carry with them. I think, therefore, I am justified in proposing this point for the consideration of the Council at this stage. The rules framed are, I fear, calculated to disturb the hereditary nature of the appointments. No doubt, discretion is given to the Deputy Commissioners to select out of the family, but once there is none in this family who is qualified, the appointment may go out of the family altogether.

MR. T. ANANDA RAO:—

That point was not unnoticed. I said we were going to respect all the traditions of the appointments subject to what is essential for improving the service.

DEWAN:—

I do not think there is any idea of departing from the principle we have all along recognised in making the appointments. The hereditary principle is fully recognised and will be departed from only when it conflicts with the fitness of the individual, and even then the office will not be taken away from the family altogether.

The motion was put to the Council and carried, and the bill referred to a Select Committee consisting of Messrs. T. Ananda Rao, A. Rangaswami Iyengar, V. N. Narasimmiyengar, M. Kantharaj Urs and M. C. Rangiengar, for report before the 28th November 1907.

The Police Bill.

MR. K. P. PUTTANNA CHETTY:—

I have already explained in my opening speech the main principles of the bill. I shall only take up certain objections brought forward in the public press against the measure.

Two kinds of objections have been raised with reference to the Bill. The first objection is directed against the continuance of the Police powers of the Amildar and the Deputy Commissioner; while the second objection, approving of this arrangement, finds fault with the bill because it is thought that it ignores the principle of the separation of the executive and judicial functions. As regards the first objection, I have dwelt sufficiently at the last meeting

[*Mr. K. P. Puttanna Chetty; Mr. T. Ananda Rao; Mr. B. Nagappa.*]

upon the advantages accruing from the exercise of control over the Police officers by the Amildar and the Deputy Commissioner, and it is not perhaps necessary to say more on the point. I may, however, point out that the bill merely defines the existing state of things and that, where it deviates from the present system, it gives more liberty of action to the Police officers than they at present enjoy. The bill merely continues the Police powers of Amildars and Deputy Commissioners which they have been enjoying for a long time. The existing system does not appear to have caused any inconvenience or injustice. Therefore it rests on those who object to the present system to make out a case for divesting these executive officers of their Police functions. There is nothing objectionable in principle in investing the chief executive officers of the taluk and district, respectively, with the executive powers of Police officers.

The objection that the bill perpetuates the combination of executive and judicial functions is based on a misapprehension of the scope and objects of the bill. It is enough to dispose of this objection to say that there is nothing either in the bill or in my speech in introducing it to justify the assumption that the combination of the executive and judicial functions is extolled or extenuated. The question is a large and difficult one; it requires consideration from various aspects. And we cannot very well deal with the question in a bill which has for its subject-matter the organization and discipline of the Police force. In this bill, what we are concerned with is, whether it is not advantageous to continue the Police powers of the executive officers referred to. In this connection I see no advantage in discussing the wholly different question of the separation of executive and judicial functions. I may, however, say that the subject is engaging the attention of Government.

With these remarks I beg to move that the bill be read in Council.

MR. B. NAGAPPA seconded the motion and said that he was in agreement with the general principles of the bill.

The motion was put to the Council and carried, and the Bill referred to a Select Committee consisting of Messrs. K. P. Puttanna Chetty, V. N. Narasimmiyengar, M. C. Rangiengar and B. Nagappa for report before the 28th November 1907.

Bill to amend the Court Fees Regulation, III of 1900.

MR. T. ANANDA RAO :—

SIR,

The prescribed formalities having been fulfilled, I rise to move under Rule 33 that the bill to amend Section 4 of the Mysore Court Fees Regulation, III of 1900, be read in Council.

2. The justification for the proposed measure was stated by me here the other day, and has been explained in the Statement of Objects and Reasons. It might be further explained that as the law is now understood to stand in suits between landlord and tenant, when the tenant sues the landlord to recover possession of land from which he was unlawfully ejected, the Court fee payable is based on the yearly rental as stated in clause (xi) (*e*) of section 4 of the Regulation. But if it is the other way, that is, if the landlord sues the tenant to recover possession of land which the tenant unlawfully persists in holding, the basis of the Court fee is not the rent but the value of the land itself. The bill now proposes to alter this so as to make the yearly rent the basis in both cases. To prevent the temptation which frequently exists to strain the terms of a tenancy beyond fair bounds either way, it is proposed to fix a minimum amount as the Court fee. Thus, the Court fee payable is to be a fixed fee of Rs. 10 or according to the last yearly rent whichever is the greater of the two. The proposed bill is short and simple, and I do not know that the Council is not prepared to proceed with it without the intervention of a Select Committee.

MR. B. NAGAPPA :—

I second the motion. It is not necessary to refer this Bill for the consideration of the Select Committee.

There is an obvious defect in the section, namely, that it does not provide for cases where a tenant denies the landlord's title and the Courts allow the plaintiff to amend his plaint and prove his title. In such cases there is no provision empowering the Courts to levy additional Court fees. There will also be a difficulty about the question of jurisdiction.

With a view to remedy these defects an amendment may be proposed at the next meeting of the Council when this Bill will be formally considered.

[*Mr. Rangiengar.*]

MR. RANGIENGAR read Section 7, sub-head (xi), clause *(c.c.)* of the British Indian Court Fees Act as amended by Act VI of 1905, and said :—The amendment introduced into the British Indian Act is very simple and covers all cases contemplated by the present proposed amendment. There is no reason why any minimum fee of Rs. 10 should be fixed. As in British India, we here may simply provide for the Court fee being paid according to the annual rental value. The learned member in charge of the bill, pointed out that a tenant can sue his landlord for possession of the property leased, paying a Court fee upon the annual rental value, and claimed for the landlord a similar indulgence. I am quite at one with him on this point. It seems to me that the provision relating to the suit by the tenant is capable of improvement. The provision as it stands at present enables the tenant to sue on a smaller stamp for being restored to possession of the property leased of which he has been wrongfully deprived. The existing provision does not provide for the tenant suing on a smaller stamp his landlord for being put in possession of the property leased, if the landlord refuses to deliver possession at all. A further difficulty in connection with the proposed amendment is what should be done when the defendant denies the lease altogether. Is the suit to be confined to the trial of one issue as to the existence of the relationship of landlord and tenant between the plaintiff and the defendant, and if that issue is found against the plaintiff, is the suit to be dismissed upon the analogy of a summary suit under Section 9 of the Specific Relief Act, or will the Council provide for the suit being tried on the question of title upon payment of any additional Court fee? These are some of the questions that demand consideration.

The Dewan observed that these were points to be discussed in a Select Committee, and the Council was also of this opinion.

The motion to read the bill was put to the Council and carried, and the bill was referred to a Select Committee consisting of Messrs. T. Ananda Rao, A. Rangaswami Iyengar, S. Narayana Rao, M. C. Rangiengar and B. Nagappa for report before the 28th November 1907.

The meeting was then dissolved.

V. P. MADHAVA RAO,
President.